

Information in State statutes and regulations relevant to the National Background Check Program: Massachusetts

This document describes what was included as of January 2011 in Massachusetts statutes and regulations relevant to the Centers for Medicare & Medicaid Services' National Background Check Program. Massachusetts has six relevant statutes and regulations, all of which were used in gathering information for this document, and which are listed below in the State Statutes and Regulations section.

Key Feature	Description
Specific facility and provider types	The State covers four of the long term care (LTC) facility and provider types named in the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), namely: skilled nursing facilities, nursing facilities, home health agencies, and personal care service providers.
Registry checks	Statutes and regulations indicate that the State conducts a State-based search of abuse and neglect registries.
Fingerprinting	Not addressed.
Rap back	Not addressed.
Provisional employment	Statutes and regulations indicate that the State allows for provisional employment, but do not clarify the provisional employment period.
Definition of direct patient access employee	Massachusetts does not define direct patient access employee. However, the following individuals are subject to criminal background checks: (A) employees and volunteers (or applicants being evaluated for such positions) who provide care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation services, or other services for elderly or disabled persons; and (B) anyone working in a position involving direct or indirect access to elderly or disabled persons or their personal information.
Provision of criminal background check results to employee	Effective May 2012, criminal background check results will be available to the employee at no cost.
Expiration of criminal history background check results	Not addressed.

Key Feature	Description
<p>Inclusion of disqualifying crimes specified in section 6201 of the Affordable Care Act:</p> <ol style="list-style-type: none"> 1. Medicare/Medicaid program-related crimes (42 U.S.C § 1320a-7(a)(1)) 2. Convictions related to patient abuse/neglect (42 U.S.C § 1320a-7(a)(2)) 3. Felony convictions related to health care fraud (42 U.S.C § 1320a-7(a)(3)) 4. Certain felony convictions related to controlled substances (42 U.S.C § 1320a-7(a)(4)) 	<ol style="list-style-type: none"> 1. Not addressed. 2. Not addressed. 3. Not addressed. 4. Not addressed.
<p>State-identified convictions</p>	<p>Massachusetts statutes and regulations identify two types of convictions that are automatically disqualifying. These are convictions for (1) assault and battery and (2) abuse against an elder. All other convictions are considered on a case-by-case basis.</p>
<p>Opportunity to contest accuracy of background check findings</p>	<p>The State provides a way to contest the accuracy of background check findings.</p>
<p>Ability to remove hiring prohibition based on rehabilitation factors</p>	<p>The State does not provide the ability to remove a hiring prohibition based on rehabilitation factors.</p>
<p>Rehabilitation/mitigation process for negative fitness determinations</p>	<p>Not addressed.</p>
<p>Independence of appeal or review process</p>	<p>Not clear.</p>

State Statutes and Regulations

Citation	Description
Massachusetts General Laws Ch. 6 (Mass. G.L. c. 6), § 172C	This indicates that criminal offender record information (CORI) must be available to entities that employ, accept as a volunteer, or refer for employment to a client any individual who will provide care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation services, or other services in a home or in a community-based setting for any elderly person or disabled person, or who will have any direct or indirect contact with such elderly or disabled persons or access to such persons' files.
Mass. G.L. c. 6, § 172E	This indicates that CORI shall be available to LTC facilities for the purpose of evaluating an applicant under final consideration for, or an individual currently employed in, a position that involves the provision of direct personal care or treatment to residents of such facilities.
Mass. G.L. c. 111, § 71	This has to do with nursing homes and intermediate care facilities for the mentally retarded: The criminal history of the prospective licensee, or any officer, director, or shareholder of the home or facility, is a factor to be considered by the Department of Public Health (DPH) in making its determination of responsibility and suitability for licensure.
803 Code of Massachusetts Regulations (CMR) 1 – 8	These are related to the Criminal History Systems Board and CORI.
105 CMR 153.018(F), 153.004	This is about the DPH's right to deny, revoke, or refuse to renew a LTC facility's license if the facility licensee or applicant for licensure has been convicted of, pleaded guilty or nolo contendere to, or admitted (in a judicial proceeding) facts sufficient to find him or her guilty of: abuse, mistreatment, or neglect of any resident of a LTC facility; rape, felonious assault, or any other felony against a person; or a felony involving the misuse of funds in connection with the Medicaid or Medicare program.
105 CMR 141.108(A)(3)	This is about the criminal history of a hospice program's prospective licensee.

Key

§ - Section

§§ - Sections